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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,679	04/15/2005	Winfried Bunsmann	BU-10PCT	8259
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FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			HERNANDEZ, MICHAEL	
ART UNIT	PAPER NUMBER			
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,679	<b>Applicant(s)</b> BUNSMANN, WINFRIED
	<b>Examiner</b> MIKE HERNANDEZ	<b>Art Unit</b> 3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 December 2007.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 10, 18 and 19 is/are rejected.
- 7) Claim(s) 11-17, 20 and 21 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 December 2007 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 9 and 22 have been cancelled. Claims 1 through 8, and 10 through 21 remain.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 18 and 19 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites the limitation "the articulation" throughout the claim. There is insufficient antecedent basis for this limitation in the claim. This rejection is repeated from the previous action.

#### ***Claim Objections***

3. **Claim 1 is objected to** because of the following informalities: Add the word 'direction' after "in a translatory" in the third line. Change the word "a" to 'in' on the fifth line to read "and is *in* mounting connection with". Appropriate correction is required.

4. **Claim 2 is objected to** because of the following informalities: Change the word "wherein" to 'in' on the second line of the second page so that the claim reads "and in a rearwardly displaced position...". Appropriate correction is required.

5. **Claim 17 is objected to** because of the following informalities: As amended, the claims does not make any grammatical sense. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1, 2, 4, 5, and 8 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 2,768,025 to Spear et al.

Regarding claim 1, Spear et al. discloses a convertible with a roof 32 that is movably supported relative to an automobile body, wherein the roof can be moved at least nearly horizontally between a closed position (Fig 1), in which a front roof section is supported on a windshield frame 26, and an intermediate position (Fig 2), in which the mounting connection between the roof and the windshield frame is released and in which the front roof section can be swiveled upward. The front roof section is considered to be the forward portion of the roof in the vehicle travel direction. The roof of Spear et al. has a rotational component (Fig 2) and a translatory displacement (initial movement) and the rotational movement occurs in succession.

As to claim 2, Spear et al. discloses the roof is supported on lateral main bearings 47 relative to an automobile body, wherein the main bearings can be moved at last nearly horizontally relative to the automotive body and that in the rearwardly displaced position of the roof, the front roof section can be swiveled upward about the main bearings.

As to claim 4, Spear et al. discloses the front roof section is mounted on the windshield frame without locks (Col 1 Ln 3-9), and at least one locking device is assigned to the displaceable main bearings (Col 4 Ln 43-48).

As to claim 5, Spear et al. discloses a positive locking connection can be made between the front roof section and the windshield frame.

As to claim 8, Spear et al. shows the distance of the horizontal displacement is limited to a roof position in which the front roof section can swivel freely upward without danger of collision with the windshield frame. As seen in Fig 1-3, the track 33 has a horizontal upper portion, where the roof disengages the window frame, and an angled portion, where the roof begins its pivoting movement. The angled section is shown aft of the upper horizontal section.

8. **Claims 1 is rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 6,299,234 to Seel et al.

Seel et al. discloses a convertible with a roof 2 that is movably supported relative to an automobile body, wherein the roof can be moved at least nearly horizontally between a closed position (Fig 1), in which a front roof section is supported on a windshield frame 5, and an intermediate position (Fig 2), in which the mounting connection between the roof and the windshield frame is released and in which the front roof section can be swiveled upward. The rotational movement is preceded by the translatory movement.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claim 3 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Seel et al.

Seel et al. discloses a convertible roof as applied to claim, however fails to specifically state the distance 44 being between 2 and 8 centimeters. It is, however, an obvious expedient to choose whatever distance is needed to disengage the front roof part from the window frame in order to pivot the roof to the open position.

11. **Claims 6 and 7 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Spear et al. in view of US Pat No. 5,636,894 to Kinnanen.

Regarding claim 6, Spear et al. discloses a convertible as applied to claim 1; however fails to disclose pins.

Kinnanen teaches (Col 3 Ln 18-28) pins 6, which are located essentially in the extension direction of the front roof part, are assigned to the front roof section and can fit into complementary recesses of the windshield frame.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Spear et al. with pins, as taught by Kinnanen, in order to guide the final movement of the front roof section and to fixedly secure the roof in place in the closed position.

As to claim 7, Kinnanen teaches a pin 6 that fits into a 'funnel' shaped recess 7 (claim 5) implying a substantially conical pin. Alternately, it would have been an obvious expedient to shape the pin of Kinnanen to whatever shape was desired.

12. **Claim 10 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Seel et al. in view of US Pat No 6,866,324 to Neubrand et al.

Seel et al. discloses a convertible as applied to claim 1 previously, including he roof comprising several rigid roof parts 3,4, wherein a rear roof part 4 extends at least between a belt line and a roof part 3 that is located in front of it in the direction of travel and above a passenger compartment.

Seel et al. fails to disclose the rear roof part having a middle section.

Neubrand et al. teaches a rear roof part 126, a roof part 120 located in front of it, and wherein the rear roof part has a middle section 130,154,156, which, in the closed state of the roof, lies between lateral main posts 132,134 and encloses a rear window 130.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Seel et al. with a middle section, as taught by Neubrand et al., in order to pivot the rear window separately from the rear pillars.

#### ***Allowable Subject Matter***

13. **Claims 11 through 17, 20, and 21 are objected to** as being dependent upon a rejected base claim, but **would be allowable** if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. **Claims 18 and 19 would be allowable** if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

At this instant, the prior art of record fails to show or make obvious the specific limitations of claim 11, including the rear roof and middle sections separately pivoted on the vehicle body having joints that form a multi-joint linkage wherein, at one stage of movement, the joints lie in the same plane, necessitating an additional front roof support.

***Response to Arguments***

15. Applicant's arguments filed 12/31/2007 have been fully considered but they are not persuasive. Regarding the Spear et al. reference, applicant argues that there is no rotational component of movement. The examiner points out that Fig 1 clearly shows the roof in a horizontal orientation. Subsequently, Fig 2 clearly shows the roof at a 45° angle to the horizontal. Therefore, it is clear that the roof of Spear et al. is rotated. In fact, the roof undergoes two rotational movements to end up in a lowered horizontal position, as noted by the applicant. The transverse rotation axis that the applicant argues is lacking from Spear et al. is located approximately near the center of the wheel (it is an imaginary axis and is the focal point of the first curved portion of the guide track). Regarding the Seel et al. reference, applicant argues that there is no initial translatory movement. Seel et al. states (Col 5 Ln 38), "As soon as the roof part 3,3' makes contact with the windscreens frame 5 in the region of the connecting member 43, the curved path of the roof structure 2,2' changes such that the latter is forced to merge into an

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essentially horizontal supporting movement directed forwardly toward the windscreen frame 5 (arrow 44 in Figs. 2 and 10)." It is clear that the closing movement exhibits a horizontal movement after a rotational movement. Therefore it is logical to assume that to open the roof, the reverse movement would take place and therefore the rotational movement would follow the translational movement.

***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References G, H, J, K , and L each discloses similar linkages for rigid roof parts. References A, B, and D disclose similar sliding movements for roofs supported on movable bearings. Specific attention should be paid to Fig 26-29 of reference E, which discloses a short sliding distance to unlock the roof before pivoting movement (see reference character 92).

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MIKE HERNANDEZ whose telephone number is (571)272-2354. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MIKE HERNANDEZ/  
Examiner, Art Unit 3612

/Dennis H. Pedder/  
Primary Examiner, Art Unit 3612